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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/587,971	06/06/2000	Subraman Rao Cherukuri	24222	9422

7590

12/10/2001

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EXAMINER

PRATT, HELEN F

ART UNIT

PAPER NUMBER

1761

7

DATE MAILED: 12/10/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

SW-7

Office Action Summary	Application No. 09/587,971	Applicant(s) CHERUKURI, SUBRAMAN RAO	
	Examiner Helen F. Pratt	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 19-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 19-23 is/are rejected.
- 7) ☒ Claim(s) 15-18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 9 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 9 and 20 are indefinite in that the word "sugar" has been used twice on lines 3 and 4 in claim 9, and on lines 2 and 4, in claim 20, and is therefore redundant.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14, 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fielden.

The claims are rejected for the reasons of record.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cherukuri et al. (4,981,698).

Claim 24 is rejected for reasons cited in the last office action.

Allowable Subject Matter

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Claims 15-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

ARGUMENTS

Applicant's arguments filed 11-8-01 have been fully considered but they are not persuasive. Applicant argues that the claimed ingredients are not shown. This is not seen because claim 1 requires an active ingredient ^{The reference discloses} which is (a) acyclovir, which was a non-herbal ingredient which has been deleted from the claims. However, the reference does show that active ingredients can be added to the product, and applicant is claiming a wide variety of ingredients, which seems to say, that almost any practical ingredient could be added to the mixture as an active ingredient. Applicant is even claiming a blend of sweeteners (claim 6) and the reference discloses "saccharin" in The table at the bottom of col. 11 and 12. Ingredient "b" requires a compressible material (col. 8, says "compressible sugar", i. e. sorbitol, dextrose as stated in claim 9, (c) a lubricant which can be magnesium or calcium stearate, as stated in claim 11 (col. 9, lines 1-5).

Even though the reference discloses a little larger caplet size, it is seen that it would have been within the skill of the ordinary worker to make a product 1.6 mm less. Nothing new or unobvious has been shown in making the product 7 mm as opposed to 8.6 mm.

Applicants argue that a "surprisingly high amount of active ingredient is in the product" which is made without heat or moisture. However, claims 1 or 14 do not ⁱⁿexclude any of these limitations. Certainly, if one can put a medicine in the tablet, then

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one can also add flavors. Flavors are disclosed at any rate in amounts of from 0 to 10 % which is within the claimed range (col. 9, lines 55-65)..

It is not seen that the reference does not state a size of the caplet. Various sizes are disclosed in col. 10, lines 25-34). Even sizes less than 8.6 down to 5.6mm. No patentable distinction is seen in limiting the size to that claimed.

It is not seen that the method of the claims is not shown, because Fielden does teach compressing dried granules (col. 15, lines 40-60). The use of solvents for granulation is not excluded by the claims.

Applicant argues as to claim 24 that Cherukuri et al. does not show adding two encapsulated sweeteners to various foods and that the claims do not require the entire process of Cherukuri et al. However, claim 24 only requires incorporating first one encapsulated product then another. Other method steps are not excluded. The reference discloses that various flavoring agents can be used such as peppermint, cinnamon, fruit (col. 21, lines 44-48) and that an effective amount of the microencapsulated flavoring agent can be added to a chewing gum base. Nothing is seen to exclude the addition of more than one flavoring agent, particularly as they are encapsulated, limiting any interaction.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Hp 12-5-01


HELEN PRATT
PRIMARY EXAMINER